

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X Index No.: CV 07 1215

EDWARD CARTER, FRANK FIORILLO, KEVIN
LAMM, JOSEPH NOFI and THOMAS SNYDER,

Plaintiffs,

ANSWER

-against-

INCORPORATED VILLAGE OF OCEAN BEACH;
MAYOR JOSEPH C. LOEFFLER, JR., individually
and in his official capacity; former mayor NATALIE
K. ROGERS, individually and in her official capacity,
OCEAN BEACH POLICE DEPARTMENT; ACTING
DEPUTY POLICE CHIEF GEORGE B. HESSE,
individually and in his official capacity ; SUFFOLK
COUNTY; SUFFOLK COUNTY POLICE DEPARTMENT;
SUFFOLK COUNTY DEPARTMENT OF CIVIL SERVICE;
and ALISON SANCHEZ, individually and in her
official capacity,

Defendants.

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Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR
JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor
NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH
POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE,
individually and in his official capacity**, as and for their answer to the plaintiffs'
complaint, states the following upon information and belief:

NATURE OF THE CLAIMS

FIRST: Deny each and every allegation contained in the paragraphs of
the complaint designated "1", "2" and "3".

JURISDICTION AND VENUE

SECOND: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated "4".

THIRD: Admit the allegations contained in paragraph designated "5".

PARTIES

FOURTH: Deny each and every allegation contained in the paragraphs of the complaint designated "6", "7", "8", "9", "10", "13", "14" and "15".

FIFTH: Admit the allegations contained in paragraph designated "11" and "12".

SIXTH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "16", "17", "18" and "19".

ADMINISTRATIVE PROCEEDINGS

SEVENTH: Admit the allegations contained in paragraphs designated "20" and "21".

EIGHTH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated "22".

FACTUAL ALLEGATIONS

Plaintiffs' Employment as Police Officers for the Village of Ocean Beach

NINTH: Admit the allegations contained in paragraph designated "23".

TENTH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "24", "25" and "27".

ELEVENTH: Deny each and every allegation contained in the paragraph of

"86".

Hesse Retaliates Against Plaintiffs & Terminates Their Employment

NINETEENTH: Deny each and every allegation contained in the paragraphs of the complaint designated "87", "90", "91", "92", "93", "94", "95", "96", "97" and "98".

TWENTIETH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "88" and "89".

Alison Sanchez Conspires With Hesse to Destroy Plaintiffs' Careers

TWENTY-FIRST: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "99", "100", "101", "102", "103", "104" and "105".

Hesse Unlawfully interferes with Plaintiffs' Efforts to Obtain New Employment

TWENTY-SECOND: Deny each and every allegation contained in the paragraphs of the complaint designated "106", "107", "109", "110", "111", "112", "113", "114" and "125".

TWENTY-THIRD: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated "108".

AS TO THE FIRST CAUSE OF ACTION

(42 U.S.C. §1983, 1985 – First Amendment Retaliation)

TWENTY-FOURTH: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR.,** individually and in his official capacity; former mayor **NATALIE K. ROGERS,** individually and in her official capacity, **OCEAN BEACH POLICE DEPARTMENT** and **ACTING DEPUTY POLICE**

CHIEF GEORGE B. HESSE, individually and in his official capacity, repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "115," inclusive, as alleged in the paragraph of the Verified Complaint designated "116," with the same force and effect as if fully set forth at length herein.

TWENTY-FIFTH: Deny each and every allegation contained in the paragraphs of the complaint designated "117", "118" and "119".

AS TO THE SECOND CAUSE OF ACTION

N.Y. State Constitution – Free Speech Retaliation

TWENTY-SIXTH: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity**, repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "119," inclusive, as alleged in the paragraph of the Verified Complaint designated "120," with the same force and effect as if fully set forth at length herein.

TWENTY-SEVENTH: Deny each and every allegation contained in the paragraphs of the complaint designated "121", "122" and "123".

AS TO THE THIRD CAUSE OF ACTION

(42 U.S.C. §1983, 1985 – Procedural Due Process/U.S. Constitution)

TWENTY-EIGHTH: Defendants, **INCORPORATED VILLAGE OF OCEAN**

BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity, repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "123" inclusive, as alleged in the paragraph of the Verified Complaint designated "124" with the same force and effect as if fully set forth at length herein.

TWENTY-NINTH: Deny each and every allegation contained in the paragraphs of the complaint designated "125", "126", "127" and "128".

AS TO THE FOURTH CAUSE OF ACTION

(New York State Procedural Due Process)

THIRTIETH: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity,** repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "128" inclusive, as alleged in the paragraph of the Verified Complaint designated "129" with the same force and effect as if fully set forth at length herein.

THIRTY-FIRST: Deny each and every allegation contained in the paragraphs of the complaint designated "130", "131", "132" and "133".

AS TO THE FIFTH CAUSE OF ACTION

(42 U.S.C. §1983 – Due Process/U.S. Constitution)

THIRTY-SECOND: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity,** repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "133" inclusive, as alleged in the paragraph of the Verified Complaint designated "134" with the same force and effect as if fully set forth at length herein.

THIRTY-THIRD: Deny each and every allegation contained in the paragraphs of the complaint designated "135", "136", "137", "138", "139" and "140".

AS TO THE SIXTH CAUSE OF ACTION

(New York State Due Process)

THIRTY-FOURTH: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity,** repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "140" inclusive, as alleged in the paragraph of the

Verified Complaint designated "141" with the same force and effect as if fully set forth at length herein.

THIRTY-FIFTH: Deny each and every allegation contained in the paragraphs of the complaint designated "142", "143", "144", "145" and "146".

AS TO THE SEVENTH CAUSE OF ACTION

(42 U.S.C. §1983, 1985 – Fourteenth Amendment – Equal Protection)

THIRTY-SIXTH: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity,** repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "146" inclusive, as alleged in the paragraph of the Verified Complaint designated "147" with the same force and effect as if fully set forth at length herein.

THIRTY-SEVENTH: Deny each and every allegation contained in the paragraphs of the complaint designated "148", "149" and "150".

AS TO THE EIGHTH CAUSE OF ACTION

(N.Y. Civil Service Law 75-b)

THIRTY-EIGHTH: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official**

capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity, repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "146" inclusive, as alleged in the paragraph of the Verified Complaint designated "147" with the same force and effect as if fully set forth at length herein.

THIRTY-NINTH: Deny each and every allegation contained in the paragraphs of the complaint designated "148", "149" and "150".

FORTIETH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs designated "153" and "154".

AS TO THE NINTH CAUSE OF ACTION

(N.Y. Labor Law 740)

FORTY-FIRST: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity,** repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "156" inclusive, as alleged in the paragraph of the Verified Complaint designated "157" with the same force and effect as if fully set forth at length herein.

FORTY-SECOND: Deny each and every allegation contained in the

paragraphs of the complaint designated "158", "159", "160", "161" and "162".

AS TO THE TENTH CAUSE OF ACTION

(Defamation *Per Se* Under State Law)

FORTY-THIRD: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity,** repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "162" inclusive, as alleged in the paragraph of the Verified Complaint designated "163" with the same force and effect as if fully set forth at length herein.

FORTY-FOURTH: Deny each and every allegation contained in the paragraphs of the complaint designated "164", "165", "166", "167", "168" and "169".

AS TO THE ELEVENTH CAUSE OF ACTION

(Termination in Violation of Public Policy Under State Law)

FORTY-FIFTH: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity,** repeat and reiterate their answer to each and every allegation contained in the paragraphs of the

Complaint designated "1" through "169" inclusive, as alleged in the paragraph of the Verified Complaint designated "170" with the same force and effect as if fully set forth at length herein.

FORTY-SIXTH: Deny each and every allegation contained in the paragraphs of the complaint designated "171", "172", "173" and "174".

AS TO THE TWELFTH CAUSE OF ACTION

(Negligent Retention of an Unfit Employee under State Law)

FORTY-SEVENTH: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity**, repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "174" inclusive, as alleged in the paragraph of the Verified Complaint designated "175" with the same force and effect as if fully set forth at length herein.

FORTY-EIGHTH: Deny each and every allegation contained in the paragraphs of the complaint designated "176", "177" and "178".

AS TO THE THIRTEENTH CAUSE OF ACTION

(RICO)

FORTY-NINTH: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official**

capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity, repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "178" inclusive, as alleged in the paragraph of the Verified Complaint designated "179" with the same force and effect as if fully set forth at length herein.

FIFTIETH: Deny each and every allegation contained in the paragraphs of the complaint designated "180", "181", "182", "183" and "184".

AS TO THE FOURTEENTH CAUSE OF ACTION

(Civil Conspiracy Under State Law)

FIFTY-FIRST: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity,** repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "169" inclusive, as alleged in the paragraph of the Verified Complaint designated "170" with the same force and effect as if fully set forth at length herein.

FIFTY-SECOND: Deny each and every allegation contained in the paragraphs of the complaint designated "186" and "187".

AS TO THE FIFTEENTH CAUSE OF ACTION

(Tortious Interference With A Prospective Business Relationship Under New York Law)

FIFTY-THIRD: Defendants, **INCORPORATED VILLAGE OF OCEAN BEACH; MAYOR JOSEPH C. LOEFFLER, JR., individually and in his official capacity; former mayor NATALIE K. ROGERS, individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT and ACTING DEPUTY POLICE CHIEF GEORGE B. HESSE, individually and in his official capacity,** repeat and reiterate their answer to each and every allegation contained in the paragraphs of the Complaint designated "1" through "187" inclusive, as alleged in the paragraph of the Verified Complaint designated "188" with the same force and effect as if fully set forth at length herein.

FIFTY-FOURTH: Deny each and every allegation contained in the paragraphs of the complaint designated "189", "190", "191" and "192".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

FIFTY-FIFTH: That the plaintiffs' complaint fails to state facts sufficient to constitute a cause of action against this defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

FIFTY-SIXTH: That if the plaintiffs sustained any injuries and/or damages at the time and place alleged in the Complaint, same were wholly caused by the culpable conduct and/or negligence of the plaintiffs and these defendants are entitled to judgment dismissing the Complaint herein.

FIFTY-SEVENTH: That if the plaintiffs sustained the injuries and damages

alleged in the Complaint, same were caused if not in whole, then in part, by the culpable conduct and/or negligence of plaintiffs and these answering defendants are entitled to judgment assessing and fixing the culpable conduct of plaintiffs contributing to said injuries and damages in proportion to plaintiffs' culpable conduct as determined after trial.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

FIFTY-EIGHTH: The plaintiffs failed to exhaust all administrative remedies that are prerequisites.

WHEREFORE, defendants, INCORPORATED VILLAGE OF OCEAN BEACH and OCEAN BEACH POLICE DEPARTMENT, demand judgment dismissing the plaintiffs' complaint herein as to said defendants or diminishing the damages recoverable by plaintiffs herein in proportion to the culpable conduct attributable to plaintiffs, together with the costs and disbursements of this action, and for any expenses incurred in the defense thereof, including attorneys' fees.

Dated: East Norwich, New York
May 1, 2007

Yours, etc.,

LAW OFFICES OF VINCENT D. McNAMARA
Attorneys for Defendants
**INCORPORATED VILLAGE OF OCEAN
BEACH; MAYOR JOSEPH C. LOEFFLER, JR.,
individually and in his official capacity;
former mayor NATALIE K. ROGERS,
individually and in her official capacity,
OCEAN BEACH POLICE DEPARTMENT;
ACTING DEPUTY POLICE CHIEF GEORGE B.**

**HESSE, individually and in his official
capacity**

BY: _____
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